IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

INCOME TAX APPEALS NO. 141/2003, 43/2006, 115/2006 & 118 OF 2006

The Commissioner of Income-tax-I,
Aaykar Bhavan, Telangkhedi Road,
Civil Lines, Nagpur. :: APPELLANT

-: Versus :-

Forest Development Corporation
of Maharashtra Ltd.,
Nagpur. :: RESPONDENT

CORAM : J. P. DEVADHAR AND
B. P. DHARMADHIKARI, JJ.

DATED : 27TH JUNE, 2007.

P.C. :

1. Heard Mr. A. S. Jaiswal, learned Counsel for the appellant and Mr. Thakkar, learned Counsel for the respondent.

2. These four appeals filed by the revenue under Section 260-A of the Income Tax Act, 1961 relate to assessment years 1996-97, 1997-98, 1998-99 and 1999-2000.

3. The basic question raised by the revenue in these appeals is; whether the Tribunal was justified in deleting the penalty levied upon the respondent under Section 271 (1)(c) of the Income Tax Act, 1961?

4. The respondent-assessee is a wholly owned company of the Government of Maharashtra and is set up with a view to promote

afforestation in the State of Maharashtra. It derives income from agriculture which is exempted from income-tax. It also derives non-agricultural income. During the assessment years in question the assessee had received interest income from savings bank account, short term deposits, vehicle advance, house building advance, interest on income-tax refund and M.S.E.B. deposit. The assessee had also earned income in some of the years from turnkey plantations. All these income were not offered to tax by the assessee but the same were disclosed in the profit and loss account as not taxable. On being called upon to explain, the assessee contended that although in the past they had categorized the said income as non-agricultural income, in the light of the decision of this Court in the case of ***CIT vs. Favre Leuba & Co. Ltd.*** *reported in* ***120 ITR 897*** (Bom.), they had categorized the above income as agricultural income. Rejecting explanation of the assessee, the Assessing Officer taxed the said amount and levied penalty under Section 271(1)(c) of the I.T. Act. On appeal filed by the assessee, the CIT (A) deleted the penalty in the assessment years in question except in assessment year 1997-98 wherein the CIT (A) confirmed the levy of penalty in principal but reduced it to the minimum level.

5. On further appeals filed by the assessee, the ITAT deleted the entire penalty levied by the Assessing Officer. Challenging the aforesaid orders, the revenue has filed these appeals.

6. The main argument of the revenue is that the interest income earned by the assessee out of unutilized funds and the income from turnkey plantations were assessable under the head "income from other sources." It is contended that the interest income was not earned from agricultural operations, and therefore, by not offering the said income to tax, the assessee had furnished inaccurate particulars. It is contended by the revenue that in fact, in the past, the assessee had shown such interest income as

non-agricultural receipts. By changing the nomenclature of the interest income and income from turnkey plantations from non-agricultural to agricultural, the assessee had concealed the material facts, and therefore, the Assessing Officer was justified in levying the penalty and the Tribunal ought not to have deleted the said penalty.

7. On perusal of the order of the Tribunal, it is seen that the assessee had disclosed all facts relating to interest income as well as income from turnkey plantations. In fact, the Assessing Officer got all the materials only from the profit and loss account as well as the computation of the income filed by the assessee. As regards the change in the nomenclature from "non-agricultural income" in to "agricultural income", the Tribunal has given finding of fact that the assessee had disclosed in the annual reports regarding the same and the assessee bona fide believed that in the light of the decision of this Court in the case of *Favre Leuba & Co. Ltd.* (supra) the above income could be claimed as "agricultural income".

8. In the case of *Favre Leuba & Co. Ltd.* (supra), the assessee therein, a sole selling agent had received interest on some deposits with the manufacturer of the product for which he was appointed as the sole selling agent. There was no condition whatsoever attached to the sole selling agency to make any deposits. The question was, whether the interest income so earned was to be assessed as business income or income from other sources. This Court held that since the advances were made to the manufacturer, owing to commercial considerations and for commercial reasons, the interest income was income from business. Since the predominant business of the assessee was agricultural, in the light of the aforesaid decision the assessee declared the interest income as agricultural

income.

9. The fact that the Assessing Officer has rejected the plea of the assessee and taxed the interest income and income from turnkey plantations as income from other sources and the same has been upheld by the Tribunal would not be a ground to hold that the assessee has concealed the income or furnished inaccurate particulars of the income. As stated the entire interest income and income from turnkey plantations were disclosed in the profit and loss account and admittedly the change in the accounting policy was also disclosed in the annual report of the respective assessment years.

10. In these circumstances, the finding recorded by the Tribunal that the assessee has neither concealed income nor furnished inaccurate particulars of income and consequently deleting penalty levied under Section 271 (1)(c) of the Income Tax Act cannot be faulted.

11. For all the aforesaid reasons we see no merits in these appeals. Accordingly, all these appeals are dismissed. However, in the facts and circumstances of the case, there would be no order as to costs.

JUDGE **JUDGE**

WWL